OCTOBER TERM, 1936.

No. 316.

IN THE MATTER OF

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,
Debtor.

CHARLES W. MULCAHY, TRUSTEE OF THE PROVIDENCE RAILROAD CORPORATION,
Petitioner,

v.

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY ET AL.,
Respondents.

PETITIONER'S REPLY BRIEF TO BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

PAUL B. TROY,
Counsel for Petitioner.

Subject Index.

	Page
Petitioner's reply brief to brief for respondent in opposition to petition for writ of certiorari	1

Table of Authorities Cited.

Cases.

Bennett v. Bevard, 6 Iowa, 82	3
Clark v. Lord, 20 Kan. 390	3
Evansville & Crawfordsville R.R. Co. v. Barbee, 59 Ind. 592	3
Hathaway v. Washington Milling Co., 139 Mich. 708	3
McHale v. Board of Commissioners, 180 Ind. 390	3
Thatcher v. Haun, 12 Iowa, 303	3
Thompson v. Board of Commissioners, 127 Kan. 863	3

Statutes.

Act of June 25, 1948, chapter 646, section 1, 62 Stat. —	1
Judicial Code, 28 U.S.C. secs. 347, 350	2
28 U.S.C. sec. 38	2
28 U.S.C. sec. 39	2, 3

Supreme Court of the United States.

October Term, 1948.

No. 316.

In the matter of

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,
Debtor.

CHARLES W. MULCAHY, Trustee of Boston and Providence Railroad Corporation,
Petitioner,
v.
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY et als.,
Respondents.

PETITIONER'S REPLY BRIEF TO BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

This reply brief is filed in answer to the argument made by respondent in its brief in opposition that the petition should be dismissed for want of jurisdiction. Respondent's argument is that, although the petition for certiorari was

timely filed under the law in force at the time the judgment was entered, it was one day late under the revision of the Judicial Code made by Section 1 of the Act of June 25, 1948, Chapter 646, 62 Stat. , effective September 1, 1948.

Respondent erroneously asserts that there was no saving clause contained in the new Act of rights existing under the laws thereby repealed. In making this assertion, counsel for respondent has apparently overlooked the provisions of Sections 38 and 39 of the new Act. These sections are as follows:

> "Sec. 38. The provisions of this Act shall take effect on September 1, 1948.
>
> "Sec. 39. The sections or parts thereof of the Revised Statutes of the District of Columbia, Revised Statutes of the United States or Statutes at Large enumerated in the following schedule are hereby repealed. Any rights or liabilities now existing under such sections or parts thereof shall not be affected by this repeal."

It is clear, entirely apart from the saving clause contained in Section 39, that the only provisions of law under which a petition for certiorari could have been filed by petitioner at any time from the date of entry of the judgment until the effective date of the new Act were the provisions of the old Judicial Code as embodied in Title 28, U.S.C., Sections 347 and 350. The right of petitioner to so file was a right accrued thereunder and existing at the time the old sections were repealed and the new Act became effective. It is respectfully submitted that this was a right expressly preserved by Section 39, above quoted.

The new law, by its terms, did not take effect until September 1, 1948, and should be construed as speaking as of

its effective date. Certainly, when Section 39 provides that the acts referred to "are hereby repealed," no one would contend that it spoke as of any time other than the effective date of the Act, namely, September 1, 1948. Likewise, when in the next sentence it saves rights "now existing," it is equally plain that it speaks as of the same date.

Respondent's argument appears to be that all rights under the old law were wiped out on September 1, 1948. Such a construction would render meaningless the saving clause contained in the last sentence of Section 39. Without that saving clause, all rights under the repealed laws would, in any event, have remained in force until September 1, 1948, since they were not repealed until that date, and the saving clause would add nothing.

It is respectfully submitted that the only reasonable construction of this clause is that it refers to rights existing at the effective date of the new law. This is also in accord with the authorities which have come to our attention. *McHale* v. *Board of Commissioners,* 180 Ind. 390; *Hathaway* v. *Washington Milling Co.,* 139 Mich. 708, 711; *Bennett* v. *Bevard,* 6 Iowa, 82; *Thatcher* v. *Haun,* 12 Iowa, 303; *Evansville & Crawfordsville R.R. Co.* v. *Barbee,* 59 Ind. 592; *Clark* v. *Lord,* 20 Kan. 390, 396; *Thompson* v. *Board of Commissioners,* 127 Kan. 863.

At the time of the repeal of the old Judicial Code, namely, September 1, 1948, the effective date of the new law, petitioner had a right under the repealed sections to file his petition for certiorari within three months after the entry of the judgment in the court below. This he did, and it is respectfully submitted that such filing was timely.

Respectfully submitted,

PAUL E. TROY,

Counsel for Petitioner.